A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISCELLANEOUS APPEAL NO.1147 OF 2005

Appellant Applicant	:	**Ramesh Kumar Jain,** Aged about 49 years, son of Late Shri Hiralal Jain, R/o Pulgaon Naka, Durg, Carrying on business in the name & style of "R.K.Transport Company" as Sole Proprietor.

Versus

Respondent Non-Applicant	:	**M/s Bharat Aluminium Company Ltd.,** A company, through its President, Aluminium Bhawan, Korba, District Korba, C.G.

Mr. Anand Kumar Tiwari, counsel for the appellant.
Mr. Abhishek Sinha, counsel for the respondent.

ORDER

(Passed on 12th January, 2006)

Per Vijay Kumar Shrivastava, J.

This is an appeal under Section 37 of the Arbitration and Reconciliation Act, 1996 (henceforth 'the Act') directed against the order dated 7-9-2005 passed by District Judge, Korba in Civil Suit No.8A/05, whereby the application filed by the appellant under Section 9 of the Act for grant of injunction restraining the respondent from lifting the material left over by the appellant and not to disturb the working phases as well as developed mining

phases developed by the appellant without taking joint measurement has been dismissed.

(157)

2. The appellant entered into an agreement with the respondent for mining of Bauxite at Mainpat Mines and transportation of it to Balco Plant, Korba. The contract was for 3 years, which commences from 1-4-2002 and ends on 31-3-2005. However, the contract was further extended upto 30-6-2005. The said contract contains arbitration clause. The appellant performed its contract according to terms and conditions of the contract. Vide letter dated 25-6-2005, the respondent informed the appellant to contact its Mines Manager for congenial closure of the activity at Mainpat and to transfer the site to it on 1-7-2005. The appellant, vide letter dated 29-6-2005 intimated the respondent that his materials at different mining stages are left in the mines, therefore, requested for taking joint measurement. The respondent agreed for joint measurement. Joint measurement was carried out from 26-7-2005 to 1-8-2005, but thereafter was stopped due to heavy rains and was agreed to resume from 10-8-2005.

3. Despite various letters issued by the appellant, the respondent did not resume joint measurement. From 21-8-2005, the respondent without recording joint measurement started lifting the material left by the appellant and transporting the same to its Plant through a new Contractor and also arbitrarily handed over the developed phases of mines which were developed by the appellant to the new Contractor. Therefore, to know the true measurement of the work left over by the appellant which will be the subject matter of the dispute in arbitration, for interim measure, the appellant filed

an application under Section 9 of the Act for issuance of injunction against the respondent from lifting the material left over by him in the mines. (158)

4. The respondent denied the claim of the appellant and pleaded that the appellant always shown his reluctance and inability in accepting its letters and despite sufficient time did not agree to counter offer, therefore, the respondent awarded the disputed contract work to other Contractor. The appellant was required to wind-up his work by 30-6-2005 and to hand over the mine from 1-7-2005. The appellant did not cooperate in carrying out the joint measurement. With due notice to the appellant, Indian Bureau of Mines has been appointed to conduct the measurement work and the said Government organisation carried out the survey on the site, completed it and submitted its report. A copy of the report has already been sent to the appellant by FAX. For dispatching the material left by the appellant at the time of loading the same, vide letter dated 21-8-2005 the appellant was informed to send his representative to be present so that supply of Bauxite to the Plant may continue and work may not stop. The survey by Indian Bureau of Mines has been completed by 25-8-2005 and consequently the material left by the appellant on the site has been transported to the refinery of the respondent. The site has now been allotted to the new Contractor.

5. Learned District Judge considered the factual aspect of the case, various correspondence made by the appellant and the respondent and held that the contract awarded to the appellant expired on 30-6-2005 and due to non-cooperation of the appellant,

the measurement has been conducted by Indian Bureau of Mines, Nagpur, therefore, for interim measurement, the application filed by the appellant on 30-8-2005 could not be treated as filed immediately. The District Judge further held that the principles of irreparable loss and balance of convenience do not find favour of the appellant, therefore, vide impugned order, the application has been dismissed. (159)

6. Both the parties are heard.

7. Admittedly, the contract had been awarded to the appellant by the respondent after due execution of agreement and that agreement contains arbitration clause, therefore, to invoke jurisdiction under Section 9 of the Act, any party may submit application for interim measures before or during arbitral proceeding or at any time after the making of the arbitral award and the Court has power to pass orders taking interim measure of protection in respect of the disputed property. The scope for granting temporary injunction in favour of the appellant is limited and the Court has only to consider whether for protection of the interest of any party relating to subject matter of the dispute any interim measure is required and if required can accordingly grant it.

8. In the instant case, the appellant was required to hand over possession of the mines to the respondent on 1-7-2005, and in the interest of both the parties, it was also necessary that proper and correct measurement of the property belonging to the appellant left at site should be done. Undisputedly, contract has been given to another person. From the record and the correspondence filed by

both the parties, it is apparent that initially the work of joint measurement has been carried out, but the same was not resumed after 10-8-2005. A letter No.564 dated 17/18-8-2005 written by the respondent to the appellant indicates the non-cooperation of the appellant towards joint measurement. Letter dated 21-8-2005, issued by the respondent to the appellant, clearly indicates that the work of lifting of Bauxite lying at site is to be carried out, therefore, for witnessing the same, the appellant may keep his representative there, but the letter was not taken by the employee present in the office of the appellant. A letter dated 23-8-2005 is also on record unveiling the fact that the persons of Indian Bureau of Mines, Nagpur came for survey, therefore, the appellant may depute his representative.

9. It was also shown that the above letter was not received by the employee of the appellant. From the record, it is evident that by 25-8-2005, Indian Bureau of Mines, Nagpur completed the survey and measurement work and handed over the report to the respondent. On the principle of preponderance of probabilities, it can be presumed that when the respondent started lifting the material from the site from 21-8-2005, it must have completed the same within a short period. It is manifest that the contract ended on 30-6-2005. Material left by the appellant on the site has been surveyed and measured by an agency of the Central Government i.e. Indian Bureau of Mines and the material left by the appellant has been transported to the Plant from the site and the site has been allotted to the new Contractor for work. Therefore, taking into account all these facts, to protect the interest of the parties, when nothing remained on the spot, no order under Section 9 of the Act

for protecting the interest of applicant would have been passed by the Court. Therefore, impugned order passed by the District Judge does not call for any interference.

10. In the light of above, the appeal deserves to be dismissed and is accordingly dismissed.

Sd/-
V.K.Shrivastava
Judge

12-1-2006

G.Singh